

**REGULATORY IMPACT ANALYSIS FOR READOPTION AND AMENDMENTS TO  
15A NCAC 02P COMMERCIAL LEAKING PETROLEUM UNDERGROUND STORAGE  
TANK CLEANUP FUND**

**December 9, 2021**

**General Information**

|                    |  |
|--------------------|--|
| Agency/Commission: | Environmental Management Commission (EMC)  |
| Department:        | Department of Environmental Quality (DEQ)<br>Division of Waste Management<br>Underground Storage Tank Section  |
| Contact:           | Wayne Randolph<br>Trust Fund Branch Head<br>(919) 323-7443<br><a href="mailto:wayne.randolph@ncdenr.gov">wayne.randolph@ncdenr.gov</a>   |
| Title of Rule Set: | Commercial Leaking Petroleum Underground Storage Tank<br>Cleanup Fund  |
| Citation:          | 15A NCAC 02P   |
| Authority:         | §143-215.94B & E provide authority for the EMC to adopt and the<br>DEQ to implement and enforce rules relating the administration of<br>the Commercial Leaking Petroleum Underground Storage Tank<br>Cleanup Fund. State rules governing the administration are found<br>in Title 15A, Subchapter 02P. |
| Impact Summary:    | State government: Yes, in benefits only<br>Local government: Yes, in benefits only<br>Private Sector: Yes, in benefits only<br>Substantial impact: No<br>Federal Requirement or Impact: No   |

### **Proposed Rule-Making Schedule:**

| <b>Action / Responsibility</b>                              | <b>Date</b>                    |
|---|--------------------------------|
| GWWMC - Approval of Rule Text and RIA to go to EMC          | January 12, 2022               |
| EMC - Approval of Rule Text and RIA for public comment      | March 10, 2022                 |
| Public Comment Period                                       | April 18, 2022 – June 17, 2022 |
| Earliest Date for Public Hearing                            | May 3, 2022                    |
| EMC - Approve Hearing Officer's Report and RIA, Adopt Rules | July 14, 2022                  |
| RRC Meeting - Approval of Rule Text                         | August 18, 2022                |
| Proposed Effective Date                                     | September 1, 2022              |
| Readoption Deadline   | January 31, 2023               |

### **Necessity and Purpose of Rule Change**

It is the responsibility of the Department of Environmental Quality (Department) Division of Waste Management (Division) Underground Storage Tank Section (Section) to implement and enforce rules relating to the administration of the commercial leaking petroleum underground storage tank (UST) cleanup fund under the statutory authority of G.S. 143-215.94B & E. State rules governing UST fund administration are found in Title 15A, Subchapter 02P of the North Carolina Administrative Code. The existing rules establish criteria and procedures for the reimbursement of costs incurred by owners, operators, and landowners from the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund.

Rule .0101 was determined to be necessary without substantive public interest effective March 6, 2018, pursuant to G.S. 150B-21.3A; but this rule is proposed for amendment to make minor updates and clarifications.

Rule .0102 is proposed for repeal because it is unnecessary, since copies of the rules can be found on the website of the Office of Administrative Hearings (OAH) or the Department's website. Note that no fiscal note is required for rules proposed for repeal per G.S. 150B-21.4(d).

Rule .0103 and Sections .0200, .0300, and .0400 are proposed for readoption in accordance with G.S. 150B-21.3A and are required to be readopted by the Environmental Management Commission (EMC) by the deadline established by the Rules Review Commission (RRC) of January 31, 2023.

### **Baseline**

The baseline for the proposed rule changes are the existing rules in 15A NCAC 02P; existing statutory requirements in Article 21A of Chapter 143 of the General Statutes (G.S. 143-215.75 to 143-215.104AA); 40 CFR 280; and existing permits issued by the Division for permitted UST facilities.

[Session Law 2015-241, Section 14.16A](#), effective September 18, 2015, is also a part of the baseline because it revised G.S. 143-215.94B and D and directly implemented the change to phase out the Noncommercial Leaking Petroleum Underground Storage Tank Cleanup Fund. The Department has been operating in compliance with the changes made by the Session Law since it became effective.

## **Summary of Rule Changes**

The majority of the proposed amendments include technical changes such as corrections; updates to information such as Department name, addresses, websites, and references; clarification of vague or unclear language; typographical edits; citation updates; and removal of redundant or unnecessary language. Amendments are also proposed to remove references to the leaking petroleum noncommercial UST cleanup fund, which was phased out, to be consistent with the changes made to G.S. 143-215.94B and D under S.L. 2015-241, Section 14.16A as described in the baseline above.

### **Section .0100**

The proposed amendments to Rules .0101 and .0103 make technical updates and provide clarification. Rule .0102 is proposed for repeal since it is no longer necessary.

### **Section .0200**

The proposed amendments to Rules .0201 and .0202 make technical updates, provide clarification, and remove references to noncommercial USTs. Proposed amendments to Rule .0202 add some definitions for clarification and remove some definitions that are no longer necessary. Note that the definition for “dual-usage tank,” and the reference to this term in the definition for “underground storage tank” are proposed to be removed because this definition is obsolete and not entirely accurate. It primarily referred to systems that store fuel for both heating and emergency generators. This definition is obsolete, because the term “commercial underground storage tank” is defined in G.S. 143-215.94A(2). If a tank meets the minimum criteria in this definition, then it may be eligible. If it does not meet the criteria in this definition, it is not eligible, and S.L. 2015-241 phased out eligibility for noncommercial tanks.

### **Section .0300**

The amendments to Rule .0301 are proposed to replace the requirements in rule with a reference to the applicable general statute. The rule language is redundant since the fee requirements are in statute.

The proposed amendments to Rule .0302 add three additional documents required to be submitted to the Department with the notification that they are acquiring ownership of an existing commercial UST. While they appear to be new rule text, they are documents that are required to be generated regardless of this proposed rule text, and the proposed amendment is only requiring that these documents also be submitted to the Department in order for the notification to be considered complete.

Proposed Item (5) requires the submittal of any existing Notice of Residual Petroleum that has been recorded for any known release on that property. This Notice is required to be completed and recorded by G.S 143B-279.9 and 279.11; and would have been required to be completed by the prior owner if a prior release had occurred. Item (6) requires submittal of a simple statement written by the new owner as to whether they intend to accept liability for any previous release, but this proposed amendment does not require that they do or not accept that liability. Item (7) requires submittal of the ownership transfer document, which would have been generated as a part of the transfer of ownership, regardless of the proposed amendment.

The Department has been requiring the submittal of the documents for the transfer of ownership and the Notice of Residual Petroleum under existing rules in order to determine compliance with existing regulations for a transfer of ownership of a UST, so adding these documents to the rule is putting into rule what is being done in practice under existing rules. Had the Department not already

been requiring these documents, adding the requirement to submit the existing documentation would require minimal effort on the part of the new owner.

Adding the documents to the rule provides clarification of what will be necessary to determine compliance with existing rules for Department staff and the new owner. Also, the statement of acceptance of liability is a new requirement, but, as mentioned above, is just a simple statement acknowledging who accepts liability, because accepting liability determines who is eligible to apply for reimbursement, and liability can be transferred. Under existing rule, one party or the other has always had to accept the liability, but documentation of this information was not necessarily required to be submitted at the time of application.

#### Section .0400

The proposed amendments to Rules .0402, .0403, and .0406 only make technical corrections, provide clarification, and/or clarify or remove references to noncommercial USTs. The proposed amendment to Rule .0402(b)(1) clarifies that, because the noncommercial fund was phased out, no costs associated with noncommercial tanks are eligible for reimbursement, regardless of the date.

#### Rule .0401

The existing language in Subparagraphs (a)(2) and (a)(3) is proposed to be deleted because it was applicable only to noncommercial underground storage tanks, and this fund has been phased out as mentioned previously. The existing language in Subparagraph (a)(4) is also proposed to be deleted to be consistent with G.S. 143-215.94B, which provides the eligibility criteria and timeframes, and therefore such criteria should not also be in rule. The criteria in the statutes were also updated by S.L. 2015-241, and the Department has been enforcing the updates since the session law was effective.

The language proposed to be added to Subparagraphs (a)(2), (3), and (4) are intended for clarification of existing rule and statute requirements. The language added to Subparagraph (3) is intended to clarify that the eligible party is defined in Paragraphs (b) through (d), and even though there may be more than one eligible party, only one eligible party can be reimbursed at a time.

The language added to Subparagraph (a)(4) is intended to clarify situations where a release at a site has been cleaned up and the site has received a No Further Action letter including a Notice of Residual Petroleum (i.e., contamination is still present, but at levels below risk-based closure standards), and subsequently has another release that co-mingles with the residuals from the previous release such that the closure standards are exceeded. It allows a responsible party to apply for eligibility and receive credit for funding already reimbursed to satisfy the deductible for the release, since co-mingled releases are considered to constitute one release per G.S. 143-215.94B.

The proposed language is intended to prevent a situation where a new owner is forced to negotiate over eligibility with a previous owner who has no involvement with the current release and does not intend to participate in cleaning it up. This proposed language is being added to clarify and put into rule what is already being done in practice by the Department when making eligibility and reimbursement decisions under existing rule; and to be consistent with the statute requirements.

The amendment to the end of Paragraph (b) is proposed to make the rule consistent with the language in G.S. 143-215.94B(b), which states in part:

“(b) The Commercial Fund shall be used for the payment of the following costs up to an aggregate maximum of one million dollars (\$1,000,000) per occurrence resulting from a discharge or release of a petroleum product from a commercial underground storage tank:

(11) Where the owner of the commercial underground storage tank is the owner only as a result of owning the land on which the commercial underground storage tank is located, the owner did not know or have reason to know that the underground storage tank was located on the property, **and the land was not transferred to the owner to avoid liability for the commercial underground storage tank.**”

Rules .0404(b) and .0405(b)

The proposed amendments to Rules .0404(b) and .0405(b) to state that proof of completion of work must be submitted in addition to proof of payment are intended to clarify the rule requirement to be consistent with and allow the Department to determine compliance with both G.S. 143-215.94E(j) and (k) (to prove that the task has been completed) and G.S. 143-215.94G(b) (to prove that expenditures have been paid). The Department has never issued a reimbursement for incomplete or unpaid work in compliance with the statute requirements.

Rule .0407

The amendment to add Paragraph (c) is proposed to allow the regulated community a choice of appealing a decision informally without being forced to potentially file a petition prematurely in order to preserve their appeal right concerning the expiration of the 60-day time limit established by G.S. 150B-23. The Administrative Procedures Act (APA, G.S. 150B) itself, along with case law interpreting the APA, determines whether a decision is an “agency decision,” eligible to be appealed under the APA. The proposed amendment will not prevent a person from formally appealing when they have that right, but rather allows them to attempt to appeal internally first to avoid having to file a full contested case when someone still hopes to work a situation out through additional discussion with the Department, or by providing additional information, etc. The proposed amendment does not modify the APA requirements or deadlines; but creates a process that gives the regulated community an additional decision point, which will also be appealable under the APA.

Upon receipt of a decision, a person may file a petition with the Office of Administrative Hearings (OAH) or appeal it informally with the Department. If they elect to appeal it informally, another decision is issued by the Department after the proposed informal appeal process, and that decision also may be contested via a petition filed with OAH. The proposed informal process does not cause the person to lose their appeal rights at OAH; but gains additional time to discuss the matter with the Department, which could eliminate the need to ever challenge a decision in OAH, thereby saving time and unnecessary cost for the regulated community and also saving time for state employees. The time and money saved would be difficult to quantify since the Department cannot predict how often requests for reimbursement will be rejected, how often the person requesting would appeal the decision, or how often an appeal could have been prevented through informal discussion.

### **Fiscal Analysis**

The entities that have the potential to be affected by the proposed amendments are existing and future regulated UST facilities permitted by the Division, which may be owned by private entities or state and local governments. However, because the amendments are proposed to make the rules consistent with existing general statutes and current Division practices, or are technical or clarifying changes only, the amendments are not expected to impose any costs to existing or future regulated USTs.

The proposed amendments do not cause any impacts to state or local governments that do not own or operate USTs. The proposed amendments do not cause any impacts to private households since they do not own or operate commercial USTs. The proposed amendments are not expected to impact public health or the environment because they do not change the frequency of inspection

of permitted USTs or affect the Division's ability to take enforcement action for non-compliance.

**Any impacts from the phase-out of the Noncommercial Leaking Petroleum Underground Storage Tank Cleanup Fund are impacts caused by the Session Law changes to the General Statutes in 2015; and are not caused by the proposed amendments.**

### *Benefits*

The proposed amendments provide clarity to future applicants in preparing applications for eligibility to the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund, and reimbursement from it; and provide clarification to the applicant on the Division's procedures for this process, which may reduce the applicant's time spent in preparing the application. The proposed amendments also provide a benefit to state government employees in the Division by providing clarity in the eligibility requirements and enforcement of the requirements.

Also, the proposed amendment to Rule .0407, which adds an informal appeal process for the determination for reimbursement, reduces the burden on both the regulated community and state government, by providing an informal process that may prevent the unnecessary filing of a formal petition for a contested case with OAH. Note that no fiscal note is required to be prepared for amendments that impose a less stringent burden on regulated persons as a part of the readoption process, per G.S. 150B-21.3A(d)(2).

### **Summary**

Based on the above analysis, the proposed amendments are not expected to have an annual aggregate impact to the affected parties of greater than or equal to \$1 million; and are not expected to impact state or local governments, private households, or public health or the environment, with the exception of providing a benefit through clarification to applicants and to state employees, and benefit of adding an informal appeal process.

1 15A NCAC 02P .0101 is proposed for amendment as follows:

2  
3 **SUBCHAPTER 02P - COMMERCIAL LEAKING PETROLEUM UNDERGROUND STORAGE TANK**  
4 **CLEANUP ~~FUNDS~~FUND**

5  
6 **SECTION .0100 - GENERAL CONSIDERATIONS**

7  
8 **15A NCAC 02P .0101 GENERAL**

9 (a) ~~The purpose of this~~ This Subchapter is to establish establishes criteria and procedures for the reimbursement of costs  
10 incurred by owners, operators, and landowners from the Commercial Leaking Petroleum Underground Storage Tank  
11 Cleanup ~~Funds~~ Fund.

12 (b) The ~~Groundwater Section~~ Underground Storage Tank (UST) Section, hereafter referred to as “the Section,” of the  
13 Division of ~~Environmental~~ Waste Management of the Department of ~~Environment, Health and Natural Resources~~  
14 Environmental Quality (DEQ), hereafter referred to as “the Department,” shall administer the Commercial ~~and~~  
15 ~~Noncommercial~~ Leaking Underground Storage Tank Cleanup ~~Funds~~ Fund for the State of North Carolina.

16 (c) ~~As authorized by G.S. 143-215.94G, the Department may engage in cleanup work it deems appropriate and pay the~~  
17 ~~costs from the Noncommercial Fund in accordance with G.S. 143-215.94D.~~

18 (c) The Department may engage in ~~investigations~~ assessment and ~~cleanups~~ remedial work pursuant to the authority  
19 as set forth in G.S. 143-215.94G in accordance with ~~the severity of threat to human health and safety and to the~~  
20 ~~environment~~, 15A NCAC 02L and subject to the availability of resources, as determined by the ~~Division~~ Department.

21  
22 *History Note: Authority G.S. 143-215.3; ~~143-215.76; 143-215.94B; 143-215.94D; 143-215.94E; 143-215.94G;~~*  
23 *143-215.94L; 143-215.94T; 143B-282;*  
24 *Eff. February 1, 1993;*  
25 *Amended Eff. September 1, 1993;*  
26 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6,*  
27 *~~2018~~2018;*  
28 *Amended Eff. XXXX 1, 20XX.*

1 15A NCAC 02P .0102 is proposed for repeal as follows:

2  
3 **15A NCAC 02P .0102 COPIES OF RULES INCORPORATED BY REFERENCE**

4 ~~(a) Copies of applicable sections of Subchapter 2N of Title 15A, North Carolina Administrative Code incorporated by~~  
5 ~~reference in this Subchapter, including any subsequent amendments and editions, are available for public inspection at~~  
6 ~~Department of Environment, Health, and Natural Resources Regional Offices. They are:~~

7 ~~(1) Asheville Regional Office, Interchange Building, 59 Woodfin Place, Asheville, North Carolina~~  
8 ~~28801;~~

9 ~~(2) Winston Salem Regional Office, Suite 100, 8025 North Point Boulevard, Winston Salem, North~~  
10 ~~Carolina 27106;~~

11 ~~(3) Mooresville Regional Office, 919 North Main Street, Mooresville, North Carolina 28115;~~

12 ~~(4) Raleigh Regional Office, 3800 Barrett Drive, Post Office Box 27687, Raleigh, North Carolina 27611;~~

13 ~~(5) Fayetteville Regional Office, Wachovia Building, Suite 714, Fayetteville, North Carolina 28301;~~

14 ~~(6) Washington Regional Office, 1424 Carolina Avenue, Farish Building, Washington, North Carolina~~  
15 ~~27889;~~

16 ~~(7) Wilmington Regional Office, 127 Cardinal Drive Extension, Wilmington, North Carolina 28405.~~

17 ~~(b) Copies of such rules can be made at these regional offices for ten cents (\$0.10) per page.~~

18  
19 *History Note: Authority G.S. 12-3.1(c); 143-215.3; 143-215.94L; 143-215.94T; 143B-282; 150B-21.6;*  
20 *Eff. February 1, 1993;*

21 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6,*  
22 *2018-2018;*

23 *Repealed Eff. XXXX 1, 20XX.*



1 15A NCAC 02P .0103 is proposed for readoption with substantive changes as follows:

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3 **15A NCAC 02P .0103 FALSE OR MISLEADING INFORMATION**

4 ~~Any owner or operator~~ If any owner, operator, or authorized agent ~~who~~ knowingly submits any false or misleading  
5 information with regard to ~~these the Rules may~~ rules of this Subchapter, and if the false or misleading information  
6 results in delay of any efforts to stop the discharge or release, results in delay of detection of any portion of the discharge  
7 or release, or results in delay of investigatory or remedial activities, then that owner, operator, or authorized agent shall  
8 be considered to be contributing to a ~~discharge, discharge or release,~~ interfering with the mitigation of a ~~discharge,~~  
9 discharge or release, or preventing the early detection of a discharge or release pursuant to G.S. 143-215.94E(g)(1).  
10 ~~143-215.94E(g)(1) if the false or misleading information results in delay of any efforts to stop the release or discharge,~~  
11 ~~results in delay of detection of any portion of the discharge or release, or results in delay of investigatory or remedial~~  
12 ~~activities.~~

13  
14 *History Note: Authority G.S. 143-215.3; 143-215.94E; 143-215.94L; 143-215.94T; 143B-282;*  
15 *Eff. February 1, ~~1993-1993~~;*  
16 *Readopted Eff. XXXX 1, 20XX.*  
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1 15A NCAC 02P .0201 is proposed for readoption with substantive changes as follows:

2  
3 **SECTION .0200 - PROGRAM SCOPE**  
4

5 **15A NCAC 02P .0201 APPLICABILITY**

6 (a) This Subchapter shall apply to the disbursement of funds from the Commercial Leaking Petroleum Underground  
7 Storage Tank Cleanup Fund ~~and Noncommercial Leaking Petroleum Underground Storage Tank Cleanup Fund~~, and to  
8 the collection of annual operating fees.

9 (b) Any portions of this Subchapter which concern annual tank operating fees apply to all owners and operators of  
10 Commercial Underground Storage Tanks that have been in use in North Carolina on or after January 1, 1989.

11 (c) This Subchapter shall apply to discharges or releases from ~~noncommercial or~~ commercial underground storage tank  
12 systems, regardless of whether such systems are regulated under ~~Subchapter 2N of Title 15A, of the North Carolina~~  
13 ~~Administrative Code.~~ 15A NCAC 02N.

14  
15 *History Note: Authority G.S. 143-215.3; 143-215.94B; 143-215.94C; ~~143-215.94D~~; 143-215.94E;*  
16 *143-215.94L; 143-215.94T; 143B-282;*  
17 *Eff. February 1, ~~1993~~ 1993;*  
18 *Readopted Eff. XXXX 1, 20XX.*

1 15A NCAC 02P .0202 is proposed for readoption with substantive changes as follows:

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3 **15A NCAC 02P .0202 DEFINITIONS**

4 (a) ~~The Definitions for "Criteria and Standards Applicable to Underground Storage Tanks" contained definitions in~~  
5 ~~15A NCAC 2N02N .0203 are hereby incorporated by reference including subsequent amendments and editions, except~~  
6 ~~that apply for the purposes of this Subchapter, except the definition of "Underground Storage Tank" shall be as defined~~  
7 ~~in Subparagraph (b)(12) of this Rule.~~

8 (b) The following terms are defined for use in this Subchapter:

9 (1) "Annual operating fee" ~~is an~~ means the annual fee established in G.S. 143-215.94C that is required to  
10 be paid to the Department by the owner or operator of each commercial underground storage ~~tank~~  
11 tank, as defined in G.S. 143-215.94A, in use on or after 1 January of the year, beginning with  
12 ~~1989 January 1, 1989.~~

13 (2) "Commission" means the Environmental Management Commission as organized under Chapter 143B  
14 of the General Statutes.

15 (3) "Department" means Department of ~~Environment, Health, and Natural Resources.~~ Environmental  
16 Quality.

17 (4) "Discovered release" means a release ~~which that~~ an owner or operator, or its employee or agent, has  
18 been made aware of, has been notified of, or has a reasonable basis for knowing has occurred.

19 ~~(5) "Dual usage tank" means an underground storage tank which could be considered both a commercial~~  
20 ~~underground storage tank and a noncommercial underground storage tank and for which both the~~  
21 ~~commercial and the noncommercial usages are integral to the operation or existence of the tank.~~

22 ~~(6) "Household" means a permanent structure, whether freestanding or connected to other units, used~~  
23 ~~primarily for living, where primary living space and primary food preparation facilities are controlled~~  
24 ~~or maintained by the residents. "Household" includes single family houses, mobile homes,~~  
25 ~~apartments, and single living units, whether or not the residents are related to each other and whether~~  
26 ~~the units are occupied on a year round or seasonal basis. "Household" does not include dormitories,~~  
27 ~~hospitals, hotels, motels, apartment buildings (as distinct from the individual apartments therein), or~~  
28 ~~other multiple dwelling structures. The term "four or fewer households" shall relate to underground~~  
29 ~~storage tanks serving households only.~~

30 ~~(7)(5)~~ "Landowner" means any record fee owner of real property that contains or contained a commercial  
31 underground storage tank of which he or she does not qualify as an owner or operator pursuant to G.S.  
32 143-215.94A.

33 ~~(6)~~ "Notice of Residual Petroleum" means the recordation of residual petroleum from underground  
34 storage tanks in accordance with G.S. 143B-279.11.

35 ~~(8)(7)~~ "Occurrence" means ~~one or more release(s) that result(s)~~ a release or releases resulting in a single  
36 plume of ~~soil, soil contamination, surface water, water contamination, or groundwater contamination~~  
37 ~~(consisting contamination, consisting~~ of free product or dissolved contaminants exceeding standards

specified in 15A NCAC 21-02L and 15A NCAC 02T .1500 ~~or any other applicable laws, rules or regulations~~ originating at a single ~~property-facility~~ as defined by G.S. 143-215.94A(3a).

~~(9)(8)~~ "Reasonable and necessary expenditures" means expenditures for the ~~cleanup-assessment and remediation~~ of environmental damage performed in accordance with applicable environmental laws ~~and regulations and which laws, regulations, and rules that~~ are essential in determining the extent of contamination, in conducting release response or remediation, or which compensate ~~third parties~~ third-parties for resulting bodily injury and property damage. The Commission shall consider such expenditures reasonable and necessary to the extent that they are supported by documentation, ~~sufficiently documented~~, are performed in an efficient manner considering comparable costs for labor, equipment, and materials, and utilize cost-efficient methods.

~~(9)~~ "Reasonable Rate Document" means the schedule of costs that the Department has determined to be reasonable and necessary costs for specific tasks pursuant to G.S. 143-215.94E(e5)(3).

~~(10)~~ "Substantive law, rule, or regulation" shall mean any law, rule, or regulation requiring an owner or operator to perform any act necessary and essential in preventing discharges or releases, in facilitating their early detection, and in mitigating the impact of discharges or releases.

~~(10)(44)~~ "Tank in operation" means an underground storage tank into which product is added or from which product is removed for purposes other than closure.

~~(11)(42)~~ "Tank in use" means an underground storage tank intended for the containment or dispensing of petroleum product.

~~(12)(43)~~ "Underground storage tank" ~~as used in this Subchapter tank~~ means any Commercial ~~or Noncommercial~~ Underground Storage Tank as defined in G.S. 143-215.94A. ~~A dual usage tank is considered to be a commercial underground storage tank.~~

*History Note: Authority G.S. 143-215.3; 143-215.94A; 143-215.94B; 143-215.94C; ~~143-215.94D~~;*  
*143-215.94E; 143-215.94L; 143-215.94T; 143B-282;*  
*Eff. February 1, 1993;*  
*Amended Eff. September 1, ~~1993~~ 1993;*  
*Readopted Eff. XXXX 1, 20XX.*

1 15A NCAC 02P .0301 is proposed for readoption with substantive changes as follows:

2  
3 **SECTION .0300 - ANNUAL OPERATING FEES**  
4

5 **15A NCAC 02P .0301 FEES AND PAYMENT**

6 ~~(a) The owner or operator of each commercial underground storage tank shall pay all annual tank-operating fees due~~  
7 ~~for that commercial underground storage tank tank, in accordance with G.S. 143-215.94C. Unpaid operating fees attach~~  
8 ~~to the tanks, notwithstanding the ownership of the tanks.~~

9 ~~(b) The Division shall send an invoice, for the amount of the annual operating fees due, to the owner or operator of any~~  
10 ~~commercial petroleum underground storage tank in use on January 1 of the year and which has been registered with the~~  
11 ~~Department. The annual operating fee shall be due and payable 30 days following the date of the invoice and shall be~~  
12 ~~submitted to the Division accordingly.~~

13 ~~(c) Any owner or operator not receiving an invoice for annual operating fees shall still pay any fees due according to~~  
14 ~~the following schedule:~~

15 ~~(1) If the owner or operator has paid annual operating fees for the subject tank in previous years, the~~  
16 ~~payment will be submitted to the Division within 30 days of the anniversary of the last invoicing date~~  
17 ~~for the fees.~~

18 ~~(2) If the owner or operator has not previously paid annual operating fees for the subject tank, any annual~~  
19 ~~operating fee is due on 1 January of that year and shall be submitted to the Division accordingly.~~

20 ~~(d) Any commercial underground storage tank (except commercial underground storage tanks not regulated under 15A~~  
21 ~~NCAC 2N) which was in operation on or after December 22, 1988 and has not been permanently closed in accordance~~  
22 ~~with 15A NCAC 2N .0800, is considered to be in use unless the provisions of G.S. 143-215.94D(b)(4) are applicable.~~

23 ~~(e) Any annual operating fee due on or after January 1, 1992, that is not paid within 30 days of the due date shall be~~  
24 ~~subject to a late penalty of five dollars (\$5.00) per day up to an amount equal to the original fee. The late penalty will~~  
25 ~~be assessed based on the date of receipt of fee payment by the Division.~~

26 ~~(f) All annual operating fees due for any year are assessed in accordance with the schedule of fees in effect during that~~  
27 ~~year. Payment of fees due for a prior year will be at the rate in effect during that prior year. It is the responsibility of~~  
28 ~~the owner or operator to determine that all fees have been paid in accordance with Paragraph (a) of this Rule.~~

29 ~~(g) In the event that an annual operating fee was paid for a tank for which a fee was not required, a refund of that fee~~  
30 ~~payment may be requested by the owner or operator. A refund will be granted if the owner or operator provides adequate~~  
31 ~~documentation that the tank was exempt from the requirement to pay the annual operating fee.~~

32  
33 *History Note: Authority G.S. 143-215.3; 143-215.94C; ~~143-215.94D~~; 143-215.94E; 143-215.94L;*  
34 *143-215.94T; 143B-282;*  
35 *Eff. February 1, ~~1993~~ 1993;*  
36 *Readopted Eff. XXXX 1, 20XX.*  
37

1 15A NCAC 02P .0302 is proposed for readoption with substantive changes as follows:

2  
3 **15A NCAC 02P .0302 NOTIFICATION**

4 Any person acquiring ownership of an existing commercial underground storage tank shall provide written notification  
5 to the ~~Division~~ Department of this action within 30 days of the date of transfer. This notification ~~must~~ shall indicate the  
6 following:

- 7 (1) ~~Name~~ name and address of the previous owner and the new owner;  
8 (2) ~~Name, name,~~ identification number, and street address of the facility;  
9 (3) ~~Date~~ date of transfer;  
10 (4) ~~Signatures~~ signatures of the transferring owner and the new owner or their authorized ~~representatives.~~  
11 representatives;  
12 (5) proof of placement of a Notice of Residual Petroleum for any known release at the site at the time of  
13 the transfer of the property;  
14 (6) statement of intent of whether the new owner intends to accept eligibility of any previous release from  
15 the tank or tanks just acquired; and  
16 (7) copy of ownership transfer documents.

17  
18 *History Note: Authority G.S. 143-215.3; 143-215.94L; 143-215.94T; 143B-282;*  
19 *Eff. February 1, ~~1993~~ 1993;*  
20 *Readopted Eff. XXXX 1, 20XX.*  
21

1 15A NCAC 02P .0401 is proposed for readoption with substantive changes as follows:

2  
3 **SECTION .0400 - REIMBURSEMENT PROCEDURE**  
4

5 **15A NCAC 02P .0401 ELIGIBILITY OF OWNER OR OPERATOR**

6 (a) Date of Release.

7 (1) ~~An owner or operator~~owner, operator, or landowner of a commercial underground storage tank is not  
8 eligible for reimbursement of costs from the Commercial Leaking Petroleum Underground Storage  
9 Tank Cleanup Fund related to releases which were discovered prior to June 30, 1988.

10 (2) ~~An owner or operator of a noncommercial underground storage tank is eligible for reimbursement of~~  
11 ~~costs without regard to the date a release is discovered. In the case of multiple releases that commingle~~  
12 ~~into one plume, the deductible is established under the first date of release.~~

13 (3) ~~An owner or operator of a commercial underground storage tank which qualifies for the~~  
14 ~~Noncommercial Fund pursuant to G.S. 143-215.94D(b)(3) and 143-215.94D(b)(4) is eligible for~~  
15 ~~reimbursement of costs without regard to the date a release is discovered. Only the currently approved~~  
16 ~~eligible party, determined in accordance with Paragraphs (b) through (d) of this Rule, may be~~  
17 ~~reimbursed from the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund.~~

18 (4) ~~An owner or operator or landowner of a commercial underground storage tank, from which a release~~  
19 ~~is discovered on or after July 3, 1991, is not eligible for reimbursement from the Commercial Fund if~~  
20 ~~the tank had been removed from the ground more than 120 days prior to the date of discovery of the~~  
21 ~~release. After such time that the Department has notified the responsible party that no further action~~  
22 ~~is required for a discharge or release pursuant to 15A NCAC 02L, eligibility may be reapplied for by~~  
23 ~~either the current or former responsible party as applicable and upon receiving eligibility, said party~~  
24 ~~shall be credited for all prior reimbursed amounts subject to G.S. 143-215.94E(j) and G.S. 143-~~  
25 ~~215.94E(k).~~

26 (b) An owner or operator of a commercial underground storage tank is not eligible for reimbursement for costs related  
27 to releases if any annual operating fees due have not been paid in accordance with Rule .0301 of this Subchapter prior  
28 to ~~discovery.~~discovery of a release from the tank. A previous owner or operator of a commercial underground storage  
29 tank may be eligible for reimbursement of costs for cleanup of a release discovered after he or she ceases owning or  
30 operating the underground storage tank if all fees due during his or her period of ownership and operation have been  
31 paid prior to discovery of the release. A landowner is eligible for reimbursement of costs without regard to the payment  
32 of ~~fees.~~fees as long as the property has not been transferred to circumvent liability in accordance with this Paragraph.

33 (c) An ~~owner or operator~~owner, operator, or landowner of a commercial ~~or noncommercial~~ underground storage tank  
34 is not eligible for reimbursement of any expenditures ~~expended costs~~ which are in excess of the amount determined  
35 reasonable in accordance with Rule ~~.0402,~~0402 of this Section and which are not necessary in performing cleanup of  
36 environmental damage and in compensating ~~third parties~~third parties for bodily injury and property damage, and ~~which~~

1 ~~that~~ are less than any deductible established for the ~~appropriate fund.~~ Commercial Leaking Petroleum Underground  
2 Storage Tank Cleanup Fund.

3 (d) An ~~owner or operator~~ owner, operator, or landowner of a commercial ~~or noncommercial~~ underground storage ~~tank~~  
4 tank, who is eligible for reimbursement under the rules of this Section, may be reimbursed for eligible costs only after  
5 submittal of a written application of eligibility to the ~~Division,~~ Department, on forms provided by the ~~Division,~~  
6 Department, which are located at 217 West Jones Street, Raleigh, NC 27699 and on the Department's website, and  
7 which includes ~~any~~ information and documentation necessary to determine ~~eligibility and to determine that any~~  
8 ~~expended costs are reasonable and necessary.~~ eligibility. An application of eligibility shall include:

- 9 (1) contact information for the applicant;
- 10 (2) site information, including tenant information if applicable;
- 11 (3) inventory of all tanks ever installed on the property;
- 12 (4) release discovery and reporting information;
- 13 (5) tank compliance history;
- 14 (6) disclosure of the existence of environmental liability insurance or any other potential sources of  
15 funding information for the release;
- 16 (7) scaled site map showing location of all tanks and releases;
- 17 (8) tank upgrade information;
- 18 (9) property deeds and bills of sale to confirm ownership history;
- 19 (10) any UST Section inspection records; and
- 20 (11) a notarized affidavit from the applicant.

21 (e) An owner or operator of a commercial ~~or noncommercial~~ underground storage tank shall not be eligible for  
22 reimbursement for costs related to releases if the owner or operator has willfully violated any substantive law, rule, or  
23 regulation applicable to underground storage tanks intended to prevent, mitigate, or facilitate the early detection of  
24 discharges or releases.

25 (f) The release response and corrective action requirements of any rules of the Commission and of any statute  
26 administered by the Department shall not ~~in any way~~ be construed as limited by, or contingent upon, any reimbursement  
27 from ~~either the Noncommercial Fund or the Commercial~~ Leaking Petroleum Underground Storage Tank Cleanup Fund.

28  
29 *History Note: Authority G.S. 143-215.3; 143-215.94B; 143-215.94E; 143-215.94L; 143-215.94N; 143-215.94T;*  
30 *143B-282;*  
31 *Eff. February 1, 1993;*  
32 *Amended Eff. September 1, 1993, 1993;*  
33 *Readopted Eff. XXXX 1, 20XX.*  
34



1 15A NCAC 02P .0402 is proposed for readoption with substantive changes as follows:

2  
3 **15A NCAC 02P .0402 CLEANUP COSTS**

4 (a) In determining whether costs expended by an ~~owner or operator~~ owner, operator, or landowner are reasonable and  
5 necessary, the ~~Division~~ Department shall consider the following:

- 6 (1) ~~Adequacy~~ adequacy and cost-effectiveness of any work performed, and technical activity utilized by  
7 the ~~owner or operator~~ owner, operator, or landowner in performing release response, site ~~assessment~~  
8 assessment, and corrective ~~action~~ action;
- 9 (2) ~~Typical billing~~ industry rates of engineering, geological, or other environmental consulting firms  
10 providing similar services in the State as determined by the ~~Division~~ Department;
- 11 (3) ~~Typical rental~~ industry rental rates for any ~~necessary equipment~~ equipment, not to exceed the purchase  
12 price, as determined by the Department. ~~Division.~~ The mount reimbursed for equipment rental shall  
13 not exceed the typical purchase price of such equipment.
- 14 (4) ~~Typical costs or~~ industry rates of any other ~~necessary~~ service, labor labor, or ~~expense as determined~~  
15 by the Division. ~~expense;~~ and
- 16 (5) ~~Whether~~ whether costs expended for corrective action were required by 15A NCAC ~~2L-02L.~~

17 (b) Expenditures not eligible for reimbursement shall include the following:

- 18 (1) ~~Costs of the removal and disposal of noncommercial underground storage tanks and contents removed~~  
19 on or after July 3, 1991, and of commercial underground storage tanks and contents removed on or  
20 after January 1, 1992; costs that are not eligible to be reimbursed pursuant to G.S. 143-215.94B, and  
21 any costs associated with noncommercial underground storage tanks;
- 22 (2) ~~Costs~~ costs of the replacement of any underground storage tank, piping, fitting, or ancillary  
23 ~~equipment;~~ equipment required to operate and maintain a UST system;
- 24 (3) ~~Costs~~ costs incurred in preparation of any proposals or bid by a provider of service for the purpose of  
25 soliciting or bidding for the opportunity to perform an environmental investigation or cleanup, even  
26 if that provider is ~~ultimately~~ selected to provide the service solicited;
- 27 (4) ~~Interest on any accounts, loans, etc.;~~ interest of any kind;
- 28 (5) ~~Expenses~~ expenses charged by the ~~owner or operator~~ owner, operator, or landowner in the processing  
29 and management of a reimbursement application or subsequent claims;
- 30 (6) ~~Attorney's~~ attorney's fees;
- 31 (7) ~~Penalties,~~ penalties, fees, and fines assessed by any court or agency;
- 32 (8) ~~Loss~~ loss of profits, fees, and wages incurred by the ~~owner or operator~~ owner, operator, or landowner;
- 33 (9) ~~Costs incurred during cleanup if preapproval of the cleanup tasks and associated costs was not~~  
34 obtained from the Division. Preapproval is not required for assessment activities or for costs  
35 determined by the Division to be related to emergency response actions; costs for which pre-approval  
36 is required as set forth in G.S. 143-215.94E(e5)(1-2), and was not obtained;

1 (10) ~~Any~~any other expenses not specifically related to environmental cleanup, or implementation of a ~~cost~~  
2 ~~effective~~cost-effective environmental cleanup, or ~~third-party~~third-party bodily injury or property  
3 ~~damage~~damage; and

4 (11) for any task for which a maximum rate is established in the Reasonable Rate Document, costs in  
5 excess of that maximum rate shall not be eligible for reimbursement without prior written pre-  
6 approval by the Department.

7  
8 *History Note: Authority G.S. 143-215.3; 143-215.94B; ~~143-215.94D~~; 143-215.94E; 143-215.94L; 143-215.94T;*  
9 *143-215.94V; 143B-282;*  
10 *Eff. February 1, 1993;*  
11 *Amended Eff. September 1, 1993;*  
12 *Temporary Amendment Eff. January 2, 1998; January 2, 1996;*  
13 *Amended Eff. October 29, 1998 (SB 1598);*  
14 *Temporary Amendment Eff. October 1, 1999;*  
15 *Amended Eff. August 1, ~~2000~~2000;*  
16 *Readopted Eff. XXXX 1, 20XX.*  
17

1 15A NCAC 02P .0403 is proposed for readoption with substantive changes as follows:

2  
3 **15A NCAC 02P .0403 ~~THIRD-PARTY~~THIRD-PARTY CLAIMS**

4 (a) An owner or operator seeking reimbursement from the ~~appropriate fund~~ Commercial Leaking Underground Storage  
5 Tank Cleanup Fund for any ~~third-party~~ third-party claim for bodily injury or property damage ~~must~~ shall notify the  
6 ~~Division-Department~~ of any such ~~claim~~ claim in accordance with G.S. 143-215.94E(e)(3). The owner or operator ~~must~~  
7 shall provide the ~~Division-Department~~ with all pleadings and other related documents ~~if of a third-party damage lawsuit~~  
8 that has been filed prior to entry into settlement agreement or consent judgement for Departmental approval. The  
9 owner or operator shall provide to the ~~Division-Department~~ copies of any medical reports, statements, investigative  
10 reports, or certifications from licensed professionals necessary to ~~determine~~ prove that a claim for bodily injury or  
11 property damage is reasonable and necessary.

12 (b) The term ~~third-party~~ third-party bodily injury means specific physical bodily injury proximately resulting from  
13 exposure, explosion, or fire caused by the presence of a petroleum release and which is incurred by a person other than  
14 the owner or operator, or employees or agents of an owner or operator.

15 (c) The term ~~third-party~~ third-party property damage means actual physical damage or damage due to specific loss of  
16 normal use of property owned by a person other than the owner or operator of an underground storage tank from which  
17 a release has occurred. A property owner shall not be considered a ~~third-party~~ third-party if the property was transferred  
18 by the owner or operator of an underground storage tank in anticipation of damage due to a release. ~~Third-party~~ Third-  
19 party property damage shall be reimbursed from the ~~appropriate fund~~ Commercial Leaking Petroleum Underground  
20 Storage Tank Fund based on the rental costs of comparable property during the period of loss of use up to a maximum  
21 amount equal to the fair market value. In the case of property that is ~~actually~~ destroyed as a result of a petroleum release,  
22 reimbursement shall be at an amount necessary to replace or repair the destroyed property.

23  
24 *History Note: Authority G.S. 143-215.3; 143-215.94B; ~~143-215.94D~~; 143-215.94E; 143-215.94L; 143-215.94T;*  
25 *143B-282;*  
26 *Eff. February 1, ~~1993~~ 1993;*  
27 *Readopted Eff. XXXX 1, 20XX.*  
28

1 15A NCAC 02P .0404 is proposed for readoption with substantive changes as follows:

2  
3 **15A NCAC 02P .0404 REQUESTS FOR REIMBURSEMENT**

4 (a) ~~After a determination of eligibility, the owner, operator, or landowner may make a request for reimbursement. An~~  
5 ~~application-A request~~ for reimbursement ~~must shall~~ be made on ~~a form-forms~~ located at 217 West Jones Street, Raleigh,  
6 NC 27699 or on the Department's website provided by the ~~Division-Department~~ only after the determination of  
7 ~~eligibility has been issued. The application form must accompany the initial reimbursement request-request shall~~  
8 ~~include the following:~~

- 9 (1) notarized certification of the costs form;  
10 (2) notarized certification of payment to subcontractors form, if applicable;  
11 (3) summary of work performed form;  
12 (4) reimbursement payment information form;  
13 (5) certification of remediation system installation form, if applicable;  
14 (6) itemized breakdown of the requested reimbursement, primary and secondary claim forms; and  
15 (7) supporting documentation of the itemized costs, such as the following:  
16 (A) subcontractor invoices;  
17 (B) correspondence from regulatory agencies;  
18 (C) invoices;  
19 (D) bills of lading;  
20 (E) per diem receipts;  
21 (F) field logs; and  
22 (G) reports.

23 (b) ~~A request for reimbursement shall include copies of any documentation required by the Division to determine that~~  
24 ~~expended costs are reasonable and necessary. Proof of completion of work and payment must shall~~ accompany any  
25 request for reimbursement, except when reimbursement ~~will be~~ is made jointly to the ~~owner or operator-owner, operator,~~  
26 or landowner and either a provider of service or a ~~third-party-third-party~~ claimant. ~~The Division may require the owner~~  
27 ~~or operator or landowner to submit any information required for the purpose of substantiating any claim for~~  
28 ~~reimbursement on forms provided by the Division.~~

29 (c) A request for reimbursement may be returned or additional information requested by the ~~Division-Department~~, if  
30 it is found to be incomplete.

31 (d) The ~~Division-Department~~ shall reimburse an ~~owner or operator-eligible owner, operator,~~ or landowner for expenses  
32 following completion of any ~~significant~~ phase of cleanup work ~~or~~ in accordance with the schedule allowed by G.S.  
33 ~~143-215.94E(e)-143-215.94E(e2).~~

34 (e) If any amount approved for reimbursement is less than the amount of reimbursement requested, the ~~Division~~  
35 Department shall issue a written explanation of why the amount requested was not approved.

1     *History Note:*     *Authority G.S. 143-215.3; 143-215.94B; 143-215.94E; 143-215.94G; 143-215.94L; 143-215.94T;*  
2                         *143B-282;*  
3                         *Eff. February 1, 1993;*  
4                         *Amended Eff. September 1, ~~1993~~1993;*  
5                         *Readopted Eff. XXXX 1, 20XX.*  
6

1 15A NCAC 02P .0405 is proposed for readoption with substantive changes as follows:

2  
3 **15A NCAC 02P .0405 METHOD OF REIMBURSEMENT**

4 (a) Reimbursement for cleanup costs shall be made only to an ~~owner or operator~~ eligible owner, operator, or landowner  
5 of a petroleum underground storage tank, or jointly to an ~~owner or operator~~ owner, operator, or landowner and a provider  
6 of service.

7 (b) Reimbursement of cleanup costs to the ~~owner or operator~~ owner, operator, or landowner shall be made only after  
8 proof of completion of work and payment for such costs has been received by the ~~Division~~ Department.

9 (c) Joint reimbursement of cleanup costs shall be made to an ~~owner or operator~~ owner, operator, or landowner and a  
10 provider of service only upon receipt of a written agreement acknowledged by both parties. Any reimbursement check  
11 shall be sent directly to the ~~owner or operator~~ owner, operator, or landowner.

12 (d) Payment of ~~third party~~ third-party claims shall be made to the owner or operator, or jointly to the owner or operator  
13 and the ~~third party~~ third-party claimant.

14 (e) Any request for reimbursement that has not been returned to the owner, operator, or landowner, or reimbursed to  
15 the owner, operator, or landowner within 90 days of submittal of such a request may be considered by the owner,  
16 operator, or landowner as having been denied by the Department.

17  
18 *History Note: Authority G.S. 143-215.3; 143-215.94B; 143-215.94E; 143-215.94L; 143-215.94T; 143B-282;*  
19 *Eff. February 1, 1993;*  
20 *Amended Eff. September 1, ~~1993~~ 1993;*  
21 *Readopted Eff. XXXX 1, 20XX.*  
22

1 15A NCAC 02P .0406 is proposed for readoption with substantive changes as follows:

2  
3 **15A NCAC 02P .0406 REIMBURSEMENT APPORTIONMENT**

4 ~~(a) Where multiple occurrences are addressed in a single cleanup action, expenses will be reimbursed based on~~  
5 ~~apportionment among the occurrences. The method of apportionment will be as follows:~~

6 ~~(1) Expenses related directly to a particular occurrence shall be applied only to that occurrence;~~

7 ~~(2) Expenses that are related to more than one occurrence will be apportioned equally among the~~  
8 ~~occurrences.~~

9 ~~(b)(a) Where~~ If not all underground storage tanks contributing to an occurrence are eligible for reimbursement,  
10 reimbursement ~~will~~ shall be made at a rate equal to the number of tanks contributing to the occurrence ~~which~~ that are  
11 eligible for reimbursement divided by the total number of tanks contributing to the occurrence.

12 ~~(e)(b)~~ If multiple underground storage tanks at a single property are contributing to a single occurrence and the tanks  
13 are owned or operated by different persons, reimbursement may be made to any of the owners or operators as if the  
14 occurrence were caused ~~solely~~ entirely by that person's underground storage tanks.

15 (c) If multiple storage tanks, either above ground or underground, at a single facility are contributing to a single  
16 occurrence, reimbursement shall be apportioned based upon the volume of eligible tanks divided by the total volume of  
17 all tanks contributing to the release.

18 (d) Where multiple occurrences are addressed in a single cleanup action, expenses shall be reimbursed based on  
19 apportionment among the occurrences. The method of apportionment shall be as follows:

20 (1) expenses related to a particular occurrence shall be applied only to that occurrence; or

21 (2) expenses that are related to more than one occurrence shall be apportioned on a pro rata basis among  
22 the occurrences.

23  
24 *History Note: Authority G.S. 143-215.3; 143-215.94E; 143-215.94L; 143-215.94T; 143B-282;*

25 *Eff. February 1, ~~1993~~ 1993;*

26 *Readopted Eff. XXXX 1, 20XX.*  
27

1 15A NCAC 02P .0407 is proposed for readoption with substantive changes as follows:

2  
3 **15A NCAC 02P .0407 ~~FINAL ACTION~~ APPEAL RIGHTS**

4 (a) The Director, ~~or his delegate~~, Underground Storage Tank Section Chief, or Trust Fund Branch Head of the Division  
5 of Waste Management shall make the agency decision on a written application for eligibility for reimbursement from  
6 the appropriate fund- Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund. The Director, ~~or his~~  
7 ~~delegate, Underground Storage Tank Section Chief, or Trust Fund Branch Head~~ shall make the agency decision on any  
8 written ~~request-claim~~ for reimbursement ~~made subsequent to an initial application- once an applicant has been granted~~  
9 eligibility.

10 (b) An ~~owner or operator- owner, operator,~~ or landowner who has not received a written notification of decision ~~been~~  
11 ~~denied of~~ eligibility to or for reimbursement from the appropriate fund- Commercial Leaking Petroleum Underground  
12 Storage Tank Cleanup Fund within ninety (90) days of after-submittal of a written application in accordance with the  
13 ~~procedures- rules~~ of this Subchapter, ~~or who has had any written reimbursement request denied after submittal in~~  
14 ~~accordance with the procedures of this Subchapter,~~ shall be notified of the right to petition for a contested case in the  
15 ~~Office of Administrative Hearings in accordance with the procedure set out in G.S. 150B-23. The Secretary of the~~  
16 ~~Department of Environment, Health, and Natural Resources shall make the final agency decision in any contested case~~  
17 ~~pursuant to G.S. 150B-36; may elect to consider the application to have been denied and may file an appeal as provided~~  
18 in Article 3 of Chapter 150B of the General Statutes.

19 (c) An owner, operator, or landowner who has received a written notification of eligibility to or for reimbursement from  
20 the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund after submittal of a written application  
21 in accordance with the rules of this Subchapter, and disagrees with the notification may elect to file an informal appeal  
22 supplying additional information. Following review of the additional information, the Director, Underground Storage  
23 Tank Section Chief, or Trust Fund Branch Head shall issue a written agency decision. If the written decision by the  
24 Director, Underground Storage Tank Section Chief, or Trust Fund Branch Head does not change the original decision  
25 of eligibility to or for reimbursement from the Commercial Leaking Underground Storage Tank Fund, the Department  
26 shall notify the owner, operator, or landowner of the right to petition for a contested case in the Office of Administrative  
27 Hearings in accordance with G.S. 150B-23.

28 (d) An owner, operator, or landowner who has received a written notification of eligibility to or for reimbursement  
29 from the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund after submittal of a written  
30 application in accordance with the rules of this Subchapter, and disagrees with the notification, may elect to file a  
31 petition for a contested case in the Office of Administrative Hearings in accordance with G.S. 150B-23 without  
32 providing any additional information.

33  
34 *History Note:* Authority *G.S. 143-215.3; 143-215.94B; ~~143-215.94D~~; 143-215.94E; 143-215.94L; 143-215.94T;*  
35 *143B-282; 150B-23; ~~150B-36~~;*  
36 *Eff. February 1, 1993;*  
37 *Amended Eff. September 1, ~~1993~~ 1993;*



